Act. No better illustration is possible of the rapid development of rules and principles for the control of corporations of a quasi public character.

Had this book been written without a preface, our review might very properly have been brought to a close with the above comments, but unfortunately such is not the situation. The book contains a preface of XVIII pages written by Mr. Ivins, which deserves a moment's notice for the reason that it well illustrates the cavalier manner in which lawyers are inclined to treat the facts of history. The lawyer is your true pragmatist. For him that is true which is useful in an argument. From the preface of this book one reads the following: "In the United States to the close of the Civil War the doctrine of *laissez-faire* had been adopted very generally as the result of the teaching of the encyclopedists and of Adam Smith, as well as of those of the later Manchester school." It would be difficult to crowd into a single sentence a larger number of misreadings in history. To speak of one only; what is the fact relative to the rôle played by the doctrine of laissez-faire in the development of transportation? The fact is, that it was not until the middle of the century that government in this country withdrew from the policy of building and operating turnpikes, canals and railways, and it was not until 1870 and the years following that the argument which appeals to the doctrine of *laissez-faire* for support became significant in the discussion of railway and corporation problems. The excursion which the author takes into the field of political science is scarcely less fortunate. He says: "The economic State, however, is primordial, and from the beginning of history invariably, and without exception always dominated, controlled and dictated the ultimate form of the Political State." Such a generalization, so big that it can be neither proven nor disproven, is too big to be scholarly, and what makes it especially repugnant is that it is wholly unnecessary for the argumentative purpose which the author had in view.

Possibly I have placed too great emphasis on this preface, and yet one who believes, as I believe, that the only safe basis for constructive legislation is modest scholarship, must deprecate unwarranted generalization whenever and wherever they may appear. This book would have been greatly improved had its preface been omitted.

HENRY C. ADAMS,

THE PRINCIPLES OF THE LAW OF EVIDENCE, with elementary rules for conducting the examination of witnesses. By W. M. Best, A. M., LL.B. Third American Edition from the Eighth English Edition. By Charles F. Chamberlayne. Boston: Boston Book Co., 1908, pp. lxxxii, 703.

We have the key to the author's discussion when we put the emphasis upon the word "Principles" rather than upon the term "Law of Evidence" in his title. In his preface to the original edition he says: "The design of the present work is not to add to the *practical* treatises by which the subject has been illustrated, but to examine the principles on which its rules are founded." The aim of the treatment is to point out what the law of evidence *ought to be* rather than to define what it is.

An examination of Mr. Chamberlayne's preface to the present edition indicates that he has prepared this edition from the point of view of one who believes that there are remediable faults in our administration of justice connected with the proof of facts, and who would attempt, in some measure at least, to point them out and suggest remedies, following in this respect the author's original thought. It may be that on reflection he would not contend that there is now the same cause for criticism of the law of evidence as furnished Jeremy Bentham the opportunity for that most interesting attack upon it in his Rationale of Judicial Evidence, and yet Mr. Chamberlayne says he "is impressed with the conviction that the need for insistence upon a dominating influence for scientific principle in the treatment of evidence, was seldom, if ever, greater than at the present time."

His indictment charges the confusion of the law of evidence, which is a branch of the adjective law, concerned only with the establishing of facts judicially, with rules of substantive law which themselves are concerned only with the definition of rights and obligations. And it involves further the charge that the judge in our modern practice has become subordinated to the jury in the sense that for an error of the court in the application of some empirical rule during the progress of the trial the judgment may be overturned, where for a like fault on the part of the jury there is no redress. In other words he objects to the doctrine that a litigant has a right as matter of law "to the observance of a precedent in connection with the administration of the rules of evidence" which an appellate court will protect. His criticism goes still farther and insists that "confusion is worse confounded" through the careless and inaccurate use of terms in the law of evidence itself.

Whether all of us see as clearly these defects as does the editor, most of us are willing to accede to these charges as not wholly groundless. Not all are appreciative of the distinction between a fact to be proven and the proof of that fact. To speak accurately rules of evidence have to do with ways and means of proving a fact. Rules which are concerned with determining whether that fact need be proven, are not rules of evidence, but rather rules of substantive law; rules which determine the essentials of the right or obligation involved; in other words, define the right or obligation. And yet it is true, that much of the material which makes up the bulk of many of our treatises on the *law of evidence* deals with questions of what are essential elements of particular rights and obligations.

As Mr. Chamberlayne says, "To say, as is commonly done, that evidence is or is not admissible to prove a given fact, when the meaning is, not that the fact can or cannot be proved in the *particular* way suggested, but that it is or is not within the issues, or is or is not an element of the right or liability as defined in substantive law, and, therefore cannot be proved in *any* way, is quite adequate to deposit the whole *corpus juris* within the apparent boundaries of the law of evidence."

Again Mr. Chamberlayne is quite right in saying that principles are often obscured in this branch of the law through the careless and inaccurate use of terms. No better illustration is at hand than one suggested by him. The accurate use of the term "burden of proof" would apply it to that obligation

which one who brings an issue to the court assumes, to establish his contention by the appropriate weight of evidence. And yet the cases are full of illustrations of its use to indicate that condition where one party or the other, at a particular stage of the trial, is called upon to produce evidence at the risk of being defeated. The last, a "burden" which shifts back and forth during the progress of the introduction of evidence, and the first a "burden" which never shifts. And this distinction is fundamental, and failure to regard it is certain to confound.

The American notes, while not exhaustive, serve well to illustrate the various propositions of the text and to indicate differences between the English and American view wherever such distinctions are found.

To the serious student of the law of evidence the book is invaluable. Much has been written upon this branch of the law in these modern days which is really illuminating and which tends toward eliminating much of that which is unscientific, and it is to be hoped that the editions of this book, under as able editorship, will not cease to appear periodically until "Words and phrases now used in confused and interblended meanings shall be employed in a single sense"; until "the rules of evidence now constantly mingled with, or mistaken for, those of substantive law, or other branches of procedure, are relegated to their proper sphere," and until "the conception that a litigant has a vested right in the application of a rule of evidence to the facts of his case as a matter of law;—in other words, that the doctrine of *stare decisis* extends to the application of a principle of administration—shall be abandoned."

V. H. L.

IDEALS OF THE REPUBLIC. By James Schouler, LL.D., Boston: Little, Brown & Co., 1908, pp. xi, 304. Price $1.50 net.

Dr. Schouler is well qualified by experience and training to "trace out" as he does in these chapters, "those fundamental ideas, social and political, to which America owes peculiarly her progress and prosperity, and to consider the application of those ideas to present conditions." The volume seems to be the work of one who has lived much in the simple past and cherishes it, and who yet appreciates the good things of the more complex present while recognizing certain dangerous modern tendencies. Throughout the book the suggestion is made—generally with a dignified mildness—that, in dealing with the problems of today, we need to recur frequently to the fundamental principles which guided the conduct of our fathers. Many readers will doubtless conclude that the author is too old-fashioned, and will not agree with him that the ideas of the old times have any application to present political and social conditions.

Such a variety of subjects is treated that full discussion of few is attempted, but the author states briefly the chief reasons for his conclusions. He would apply the old and simple principles whether in deciding what are "excessive fines" (and while admitting that "excessive" is a relative term, he thinks that a fine of twenty-nine millions is excessive—p. 63), or in considering what shall be done to curb the recklessness of many drivers of automobiles: "This